

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LUIS ZELAYA, *et al.*,

Plaintiffs,

v.

TULALIP TRIBAL POLICE DEPARTMENT,  
*et al.*,

Defendants.

No. C13-0004RSL

ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS

This matter comes before the Court on defendants' "Motion to Dismiss." Dkt. # 9.

Having reviewed the memoranda submitted by the parties, the Court finds as follows:

This action arises out of a motor vehicle accident occurring in Lake Stevens, Washington, between plaintiff Jose Espinoza and defendant Ronald Perry, a Tulalip Police Officer. Although defendants have not raised a colorable or plausible argument that tribal jurisdiction exists, they have asserted both sovereign immunity to and lack of subject matter jurisdiction over plaintiffs' claims. Plaintiffs, who have the burden of establishing that the Tulalip Tribe waived its sovereign immunity (U.S. v. Park Place Assocs., Ltd., 563 F.3d 907, 924 (9th Cir. 2009)), and the factual basis for the exercise of diversity jurisdiction in this case (Drake v. Obama, 664 F.3d 774, 779 (9th Cir. 2011)), have not responded to these arguments either in their memorandum or their First Amended Complaint.

ORDER GRANTING IN PART DEFENDANTS'  
MOTION TO DISMISS

1 For all the foregoing reasons, defendants' motion to dismiss (Dkt. # 9) is  
2 GRANTED insofar as plaintiffs have not established that the Tulalip Tribe waived its sovereign  
3 immunity or that this Court has subject matter jurisdiction over plaintiffs' claims.<sup>1</sup> The Clerk of  
4 Court is directed to enter judgment in favor of defendants and against plaintiffs.

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6 Dated this 15th day of May, 2013.

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8 Robert S. Lasnik  
9 United States District Judge

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<sup>1</sup> Leave to amend is not appropriate in this case. Defendants' clearly raised issues that could  
24 have and should have been addressed in opposition to the motion to dismiss or in the First Amended  
25 Complaint. Plaintiffs made no attempt to provide facts or legal authority to overcome the immunity and  
26 jurisdictional arguments raised by defendants, and there does not appear to be any reason to authorize  
further amendment of the complaint.